

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 26, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-2635-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN THE MATTER OF THE LIQUIDATION OF

WISCONSIN MORTGAGE ASSURANCE CORPORATION,

RESPONDENT-RESPONDENT,

v.

COLUMBUS FEDERAL SAVINGS BANK,

CLAIMANT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
WILLIAM D. JOHNSTON, Judge. *Affirmed.*

Before Eich, C.J., Roggensack and Deininger, JJ.

PER CURIAM. Columbus Federal Savings Bank appeals an order affirming a liquidator's recommendation to deny Columbus's claim against the Wisconsin Mortgage Assurance Corporation (WMAC). The issue is whether the

trial court erred in concluding that Columbus filed an untimely claim. We conclude that the claim was untimely, and therefore affirm.¹

The material facts are not in dispute. WMAC (under a different corporate name) issued mortgage loan insurance to the Richard Carlyon Corporation in 1971. Columbus purchased the insured loans from Carlyon in 1983. WMAC suffered financial difficulties and liquidation proceedings were commenced in February 1985. In April 1985, the trial court entered a liquidation order abating all actions against WMAC and directing all claimants to file their claims in this proceeding. Meanwhile, beginning in March 1985, and continuing through January 1989, Columbus incurred defaults on twelve of its insured loans. It first sued on the WMAC policy in Federal District Court, but the second of its two actions was abated in March 1990 before Columbus obtained any relief.

WMAC did not file a claim in this proceeding until July 1993. The liquidator then determined that the claim was untimely because WMAC's policy imposed a two-year limitation on any claim for recovery under the policy. Columbus conceded that it did not file its claim within two years of its losses, but moved for summary judgment on the grounds that §§ 645.42(2) and 645.49(3), STATS., rendered the two-year contractual limitation unenforceable. The trial court disagreed, affirmed the liquidator's determination, and dismissed Columbus's claim.

Section 645.42(2), STATS., provides that an order to liquidate the business of an insurer fixes "the rights and liabilities of any such insurer and of its creditors ... as of the date of filing of the petition for liquidation." Columbus

¹ This is an expedited appeal under RULE 809.17, STATS.

argues that we must construe fixing the “rights and liabilities” of the insurer and its creditors to include the tolling of any contractual limitations on suits. That interpretation is strengthened, in Columbus’s view, by reading the statute in conjunction with § 645.49(3), STATS., which tolls any period of limitation for an action against an insurer between the filing of a petition for liquidation and its *denial*, and further provides that “[a]ny action against the insurer that might have been commenced when the petition was filed may be commenced for at least 60 days after the petition is denied.” Section 645.49(3), however, plainly refers only to situations where the petition is denied and not when a liquidation petition is granted, as it was here.

We reject Columbus’s statutory interpretation. Section 645.42(2), STATS., is ambiguous because the “fixing of rights and liabilities” might reasonably include or exclude the tolling of a contractual limitation. We must therefore look elsewhere for the legislative intent. *In re Haskins*, 101 Wis.2d 176, 189-90, 304 N.W.2d 125, 131 (Ct. App. 1980). In this case, legislative intent is readily determined by examining two related statutes, §§ 645.46(18) and 645.49(2), STATS. The former provides, in relevant part, that in a liquidation proceeding the liquidator may assert statutes of limitation defenses on behalf of the insurer. The latter, entitled “Statutes of Limitations on Claims by Insurer,” provides that any period of limitation fixed for instituting a suit *by* the insurer that has not expired when the liquidation proceeding commences, continues for at least sixty days after entry of the order for liquidation.

Taken together, these two statutes demonstrate an unequivocal legislative intent that periods of limitation remain generally enforceable during a liquidation proceeding, unless stayed by specific statutory provisions. To hold otherwise, and to accept Columbus’s interpretation, would violate the basic rule

that statutes relating to the same subject matter must be construed together and harmonized. *Kramer v. City of Hayward*, 57 Wis.2d 302, 311, 203 N.W.2d 871, 876 (1973).

By the Court.—Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

